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IN THE

# Supreme Court of the United States

**October Term, 1970**

No. 388

MARSHALL P. SAFIR and SAPPHIRE STEAMSHIP LINES INC.,

*Petitioners,*

vs.

ANDREW GIBSON, *et al.*,

*Respondents.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

## PETITIONERS' REPLY AND SUPPLEMENTAL BRIEF

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On September 17, 1970, U. S. District Judge Dooling signed the order and memo to counsel explaining the order, which are set out in the addendum hereto.

The order and memo coupled with the brief of the U. S. Government respondents are ample proof of the judicial and administrative attrition that petitioners will be subjected to if this Court does not now grant certiorari.

After five (5) long years, it is not premature for the Court to grant certiorari. On the contrary, the time is overdue for the authoritative review which only the Supreme Court can provide for this important and meritorious cause.

Our position as set forth on page 14 of the Petition for Certiorari, is fully borne out by the tortuous instructions of an able District Court Judge in trying to implement the first phase of the Mandate of the Second Circuit Court of Appeals.

**We respectfully pray that the Petition for Certiorari be granted.**

Dated: New York, New York,
September 28, 1970.

Respectfully submitted,

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## Memo to Counsel

Re: *Safir* v. *Gibson* 68 C 643

The second draft, sent out September 14, has been signed.

The accompanying order does not require that the "considered decision on grounds consistent with the statute" whether or not to seek recovery shall be made by the Maritime Administration wholly internally, and without the making of such record (made on notice and with opportunity to present matter relevant to the decision) as the Administration considers appropriate. It is not intended, either, to mandate a severance on the part of the Administration of its task, as fixed by the decisions of the Court of Appeals, into two distinctly compartmentalized sets of acts, such as, *first*, a process of decision, constituting an exercise of an entirely internal Administration discretion, viewed as an act of Government, about whether or not to seek recovery of subsidies paid during the period of violation, and then, if the decision is to seek recovery, *second*, a distinct process of decision made after an adjudicatory hearing to determine the carriers from whom and the amounts in which such recovery should be sought.

If the Administration's task does involve two aspects or phases of decision making, the order is not intended to prescribe the precise modus operandi in arriving at the final result.

Brooklyn, New York
September 17, 1970.

JOHN F. DOOLING
U. S. D. J

## Order on Mandate of U. S. Court of Appeals for the Second Circuit

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

68 C 643

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MARSHALL P. SAFIR, et al.,

Plaintiffs,

*against*

ANDREW GIBSON, et al.,

Defendants.

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The plaintiffs appealed from the order of this Court, dated and entered December 9, 1969, denying their application for an injunction and other appropriate relief in all respects, to the U. S. Court of Appeals for the Second Circuit. The said Court decided the appeal by an opinion dated February 26, 1970 (docket No. 34355) modifying and affirming said order as modified. By opinion dated June 18, 1970, the said Court denied petitions for rehearing filed by Intervenors. Upon the opinions and mandate of the Court of Appeals it is

ORDERED, ADJUDGED AND DECREED that

The Maritime Administration is instructed to proceed herein without delay, and consistently with the decisions herein of the United States Court of Appeals for the Second Circuit, and in making its considered decision on grounds consistent with the statute whether to recover the subsidies paid in the past, not to redetermine the issue whether the AGAFBO carriers' concerted action in reduc-

ing their rates to an unreasonably low level and holding them there for eleven months was unjustly discriminatory of unfair to Sapphire, provided, however, that the Maritime Administration is not prevented from investigating the nature and extent of the individual carriers' participation in the illegal action, should it find these matters relevant to its ultimate decision on whether to seek recovery of subsidies paid during the continuance of the violation of Section 810, Merchant Marine Act, 1936 as amended (46 U. S. C., §1227) and, if so, how much and from whom.

Brooklyn, New York
September 17th, 1970.

s/ JOHN F. DOOLING
U. S. D. J.